

10.6. Interfaces with law enforcement agencies and other security matters shall be conducted as specified in Schedule 10.6.

## 11.0 PAYMENTS; TAXES AND AUDITS

11.1. Payment of Charges. Subject to the terms of this Agreement, Reseller shall pay Ameritech all undisputed amounts on or before the date (the "Bill Due Date") which is the later of (i) thirty (30) calendar days after Reseller's receipt of an invoice and (ii) forty-five (45) calendar days from the date of invoice. If the Bill Due Date is on a day other than a Business Day, payment will be made on the next Business Day. Payments shall be made in U.S. Dollars via electronic funds transfer ("EFT") to Ameritech's bank account. Within thirty (30) days of the Effective Date, Ameritech shall provide Reseller the name and address of its bank, its account and routing number and to whom payments should be made payable. If such banking information changes, Ameritech shall provide Reseller at least sixty (60) days' written notice of the change and such notice shall include the new banking formation. If Reseller receives multiple invoices which are payable on the same date, Reseller may remit one (1) payment for the sum of all amounts payable to Ameritech's bank. Each Party shall provide the other Party with a contact person for the handling of payment questions or problems.

## 11.2. Taxes.

11.2.1. Reseller shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon Reseller (or Ameritech when Ameritech is permitted to pass along to Reseller such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. Reseller shall furnish Ameritech a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to Reseller for any charges invoiced prior to the date such exemption certificate is furnished. To the extent that a Party includes gross receipts taxes in any of the charges or rates of services provided hereunder, no additional gross receipts taxes shall be levied against or upon Reseller.

11.2.2. The Party obligated to pay any such taxes may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery; provided that such contesting Party shall not permit any lien to exist on any asset of the other Party by reason of such contest. The Party obligated to collect and remit shall cooperate in any such contest by the other Party. As a condition of contesting any taxes due hereunder, the contesting Party agrees to be liable and indemnify and reimburse the

EXECUTION ORIGINAL

other Party for any additional amounts that may be due by reason of such contest, including any interest and penalties.

**11.3. Interest Charges.** If Reseller fails to remit payment for any charges for services by the Bill Due Date, or if a payment or any portion of a payment is received by Ameritech after the Bill Due Date, or if a payment or any portion of a payment is received in funds which are not immediately available to Ameritech as of the Bill Due Date (individually and collectively, "Past Due"), then an interest charge shall be assessed for late payment. Past Due amounts shall accrue interest as provided in Section 11.6. Any interest charges assessed on any Disputed Amounts shall be paid or credited, as the case may be, as provided in Section 11.4.2. In no event, however, shall interest be assessed on any previously assessed interest charges.

**11.4. Disputed Amounts.**

**11.4.1.** If any portion of an amount due to Ameritech under this Agreement is subject to a bona fide dispute between the Parties, Reseller shall, prior to the Bill Due Date, give written notice to Ameritech of the amounts it disputes ("Disputed Amounts") and include in such written notice the specific details and reasons for disputing each item; provided, however, a failure to provide such notice by that date shall not preclude Reseller from subsequently challenging billed charges. Reseller shall pay when due (i) all undisputed amounts to Ameritech and (ii) all Disputed Amounts into an interest-bearing escrow account with a third party escrow agent satisfactory to Ameritech. Notwithstanding the foregoing, except as provided in Section 11.5, Reseller shall be entitled to dispute only those charges for which the Bill Due Date was within the immediately preceding twelve (12) months of the date on which Ameritech received notice of such Disputed Amounts. Reseller shall, however, pay Ameritech all undisputed amounts on or before the Bill Due Date.

**11.4.2.** Disputed Amounts in escrow shall be subject to interest charges as set forth in Section 11.3. If the dispute regarding the Disputed Amounts is resolved in favor of Reseller, (i) Ameritech shall credit Reseller's invoice for the amount of the Disputed Amounts, together with any applicable interest charges assessed, no later than the second Bill Due Date after the resolution of the dispute along with interest pursuant to Section 11.3 for the number of days from the date on which the Disputed Amounts were deposited in the escrow account until the date Reseller's invoice is credited and (ii) the escrowed Disputed Amounts shall be released to Reseller, together with any accrued interest thereon. Accordingly, if the dispute regarding the Disputed Amounts is resolved in favor of Ameritech, the escrowed Disputed Amounts shall be released to Ameritech, together with any interest, accrued thereon, and Reseller shall no later than the second Bill Due Date after the resolution of the dispute, pay Ameritech the difference between the

EXECUTION ORIGINAL

amount of accrued interest it received from the escrow account and the amount Ameritech is entitled to pursuant to Section 11.3.

11.4.3. If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to Ameritech of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the Disputed Amounts and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Disputed Amounts and negotiate in good faith in an effort to resolve such Disputed Amounts. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

11.4.4. If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 11.4.3, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission, the FCC, or a court of competent jurisdiction may direct payment of any or all Disputed Amounts (including any accrued interest) thereon or additional amounts awarded to be paid to either Party.

11.4.5. The Parties agree that all negotiations pursuant to this Section 11.4 shall remain confidential in accordance with Section 17.0 and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

11.5. Audit Rights.

11.5.1. Subject to the restrictions set forth in Section 17.0, and except as may be otherwise specifically provided in this Agreement, a Party ("Auditing Party") may audit the other Party's ("Audited Party") books, records, data and other documents, as provided herein, once annually (commencing on the Service Start Date) for the purpose of evaluating the accuracy of Audited Party's billing, invoicing and/or payment under this Agreement. The scope of the audit shall be limited to the services provided and purchased by the Parties and the associated charges, books, records, data and other documents relating thereto for the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the Service Start Date) and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the Service Start Date. Such audit shall begin no fewer than thirty (30)

EXECUTION ORIGINAL

days after Audited Party receives a written notice requesting an audit and shall be completed no later than thirty (30) days after the start of such audit. Such audit shall be conducted by an independent auditor acceptable to both Parties. The Parties shall select an auditor by the thirtieth (30) day following the Audited Party's receipt of a written audit notice. The Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and document more than once (1) during any annual period if the previous audit found previously uncorrected net variances or errors in invoices in the Auditing Party's favor with an aggregate value of at least two percent (2%) of the amounts due or payable by Auditing Party for audited services provided during the period covered by the audit.

11.5.2. Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit, providing the independent auditor reasonable access to any and all appropriate Audited Party employees and books, records and other documents reasonably necessary to assess the accuracy of Audited Party's bill. No Party shall have access to the data of the other Party, but shall rely upon summary results provided by the independent auditor. Audited Party may redact from the books, records and other documents provided to the independent auditor any confidential Audited Party information that reveals the identity of Customers of Audited Party or CPNI of any such Customer. Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.

11.5.3. If any audit confirms any undercharge or overcharge, then Audited Party shall (i) for any overpayment promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of or failure to act by the Audited Party, immediately compensate Auditing Party for such undercharge, in each case with interest at the lesser of (x) one and one-half percent (1 1/2%) per month and (y) the highest rate of interest that may be charged under Applicable Law, compounded daily, for the number of days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available, as the case may be.

11.5.4. Audits shall be at Auditing Party's expense, subject to reimbursement by Audited Party in the event that an audit finds, and the Parties subsequently verify, adjustment in the charges or in any invoice paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than two percent (2%) of the aggregate charges for the audited services during the period covered by the audit.

EXECUTION ORIGINAL

11.5.5. Any disputes concerning audit results shall be referred to the Parties' respective responsible personnel for informal resolution. If these individuals cannot resolve the dispute within thirty (30) days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set forth in this Section 11.0. Any additional audit shall be at the requesting Party's expense.

11.6 Interest Rate. Any undisputed amounts not paid and immediately available when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the number of days from the Bill Due Date to and including the date that payment is actually made and available.

11.7 Failure to Pay. Notwithstanding anything to the contrary contained herein, if Reseller fails to (i) pay any undisputed amounts by the Bill Due Date, (ii) pay the disputed portion of a past due bill into an interest-bearing escrow account, (iii) give written notice to Ameritech of the specific details and reasons for disputing amounts, (iv) pay any revised deposit or (v) make a payment in accordance with the terms of any mutually agreed upon payment arrangement, Ameritech may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide a written demand to Reseller for failing to comply with the foregoing. If Reseller does not satisfy the written demand within five (5) business days of receipt, Ameritech may exercise any, or all, or the following options:

- (a) assess a late payment charge and where appropriate, a dishonored check charge;
- (b) require provision of a deposit or increase an existing deposit pursuant to a revised deposit request;
- (c) refuse to accept new, or to complete pending, orders; and/or
- (d) discontinue services.

Ameritech's exercise of any of these options shall not delay or eliminate Reseller's obligation to pay the charges set forth on each and every invoice on or before the applicable Bill Due Date. Once disconnection has occurred, additional charges may apply. In no event shall Ameritech's failure to provide a product or service to Reseller under this Section 11.7 apply to any performance standard or benchmark measuremark.

If Ameritech discontinues Reseller's Resale Services upon Reseller's failure to pay such past due undisputed amounts and a Reseller Customer fails to select a new carrier prior to such

EXECUTION ORIGINAL

discontinuation of Reseller's Resale Services, then Ameritech may, subject to tariffed eligibility requirements, provide local exchange Telecommunications Service to such Customer at Ameritech's then current tariff rates, except that Reseller agrees that it shall pay to Ameritech all applicable service establishment charges that would otherwise have been assessed to such Customer. Reseller acknowledges that Ameritech shall have no liability to Reseller or Reseller's Customers in the event Ameritech discontinues the provision of Resale Services for Reseller's failure to pay past due undisputed amounts as provided in this Section 11.7.

**12.0 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE RESALE SERVICES CONTEMPLATED BY THIS AGREEMENT, AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

**13.0 INDEMNIFICATION**

13.1. A Party (the "Indemnifying Party") shall defend and indemnify the other Party, its officers, directors, employees and permitted assignees (collectively, the "Indemnified Party") and hold such Indemnified Party harmless against

(a) any Loss to a third person arising out of the negligence or willful misconduct by Indemnifying Party or its agents, contractors, or others retained by such parties in connection with its provision of services under this Agreement;

(b) any Loss arising from such Indemnifying Party's use of services offered under this Agreement, involving pending or threatened claims, actions, proceedings or suits ("Claims") for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's Customers;

(c) any Loss arising from Claims for actual or alleged infringement of any Intellectual Property right of a third person to the extent that such Loss arises from an Indemnified Party's or an Indemnified Party's Customer's use of a service provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply in the case of (i) (A) any use by an Indemnified Party of a service (or element thereof) in combination with elements, services or systems supplied by the Indemnified Party or persons other than the Indemnifying Party or (B) where an Indemnified Party or its Customer modifies or directs the Indemnifying

EXECUTION ORIGINAL

Party to modify such service and (ii) no infringement would have occurred without such combined use or modification; and

(d) any and all penalties imposed upon the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 ("CALEA") and, at the sole cost and expense of the Indemnifying Party, any amounts necessary to modify or replace any equipment, facilities or services provided to the Indemnified Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

13.2. Notwithstanding anything to the contrary contained herein, in no event shall an Indemnifying Party have an obligation to indemnify, defend, hold the Indemnified Party harmless or reimburse the Indemnified Party or its Customers for any Loss arising out of a Claim for liquidated damages asserted against such Indemnified Party.

13.3. Whenever a Claim shall arise for indemnification under this Section 13.0, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party shall have the right to defend against such liability or assertion in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Until such time as Indemnifying Party provides such written notice of acceptance of the defense of such Claim, the Indemnified Party shall defend such Claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party, to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such Claim. The Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such Claims subject to consultation with the Indemnified Party. The Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement. At any time, an Indemnified Party shall have the right to refuse a compromise or settlement and, at such refusing Party's cost, to take over such defense; provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnified Party shall be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnified Party and also shall be entitled to employ separate counsel for such defense at such Indemnified Party's expense. If the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnified Party

shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 17.0.

#### 14.0 LIMITATION OF LIABILITY

14.1. A Party shall be responsible only for the service(s) and facility(ies) (including Resale Services provided by Reseller and other Telecommunications Services provided by Ameritech) which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the services and facilities provided by the other Party, its agents, subcontractors, or others retained by such parties. Except as otherwise provided in Section 13.0, a Party shall not be liable to the other Party for any Loss, defect or equipment failure caused by the conduct of the other Party, the other Party's Customers, agents, servants, contractors or others acting in aid or in concert with the other Party.

14.2. Except for indemnity obligations under Section 13.0, Ameritech's liability to Reseller for any Loss relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract, tort or otherwise, shall be limited to the total amount properly charged to Reseller by Ameritech for the service(s) or function(s) not performed or improperly performed. Notwithstanding the foregoing, in cases involving any Claim for a Loss associated with the installation, provision, termination, maintenance, repair or restoration of a Resale Service provided for a specific Reseller Customer, liability shall be limited to the greater of: (i) the total amount properly charged to Reseller for the service or function not performed or improperly performed and (ii) the amount Ameritech would have been liable to its Customer if the comparable retail service was provided directly to its Customer.

14.3. A Party may, in its sole discretion, provide in its tariffs and contracts with its Customers or third parties that relate to any service, product or function provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such Customer or third party of (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the applicable person for the service, product or function that gave rise to such Loss and (ii) any Consequential Damages (as defined in Section 14.4). To the extent a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability provisions referenced in this Section 14.3.



EXECUTION ORIGINAL

14.4. In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 13.0 to indemnify, defend and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third party.

14.5. Ameritech shall not be responsible for errors that appear in Ameritech's listings, 9-1-1 and information databases or for incorrect referrals of customers to Reseller for any ongoing Reseller services, sales or repair inquiries, and with respect to such mistakes or incorrect referrals, Reseller shall indemnify and hold Ameritech harmless from any and all Losses incurred on account thereof by third parties (including Reseller's Customers or employees). Notwithstanding anything to the contrary contained herein, Ameritech's liability to Reseller and any third party shall be limited to the maximum extent permitted by Applicable Law.

14.6 Ameritech shall not be responsible for Reseller's or Reseller's Customer's integration of service components. Ameritech shall not be responsible for the manner in which the use of Resale Services or the associated charges of Resale Services are allocated to others by Reseller in reselling the Resale Services. All applicable rates and charges for the Resale Service shall be billed to and be the responsibility of Reseller.

14.7 No remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under Applicable Law or otherwise.

## 15.0 TERM AND TERMINATION

15.1 The term of this Agreement shall be two (2) years (the "Initial Term" which shall begin on the Effective Date. Upon expiration of the Initial Term, this Agreement shall automatically be renewed for additional one (1) year periods (each, a "Renewal Term", the terms "Renewal Term" and "Initial Term" sometimes collectively referred to as the "Term") unless a Party delivers to the other party written notice of termination of this Agreement at least one hundred twenty (120) days prior to the expiration of the Initial Term or a Renewal Term.

15.2 Notwithstanding anything to the contrary contained in Section 15.1, upon delivery of written notice at least one hundred twenty (120) days prior to the expiration of the Term, either Party may require negotiations of the rates, prices, charges, terms and conditions of this Agreement effective upon expiration of such Term. Upon receipt of notice, each Party shall have

EXECUTION ORIGINAL

a good faith obligation to engage in such negotiations. If the Parties are unable to satisfactorily negotiate such new rates, prices, charges, terms and conditions within ninety (90) days of such written notice, either Party may petition the Commission or take such other action as necessary to establish appropriate terms. If prior to the expiration of the Term, the Parties are unable to mutually agree on such new rates, prices, charges, terms and conditions, or the Commission does not issue its order to establish such provisions, the Parties agree that the rates, prices, charges, terms and conditions ultimately ordered by such Commission or negotiated by the Parties shall be effective retroactive to the expiration date of the Term.

15.3. Ameritech shall have the right to terminate this Agreement if Reseller has not obtained within ninety (90) days after the Effective Date certification from the Commission as a reseller or LEC within the State of Illinois. Termination shall be effective upon Reseller's receipt of written notice thereof.

15.4. If Reseller terminates this Agreement prior to the Service Start Date, or if Ameritech terminates this Agreement pursuant to Section 15.1, Reseller shall reimburse Ameritech for its reasonable and demonstrable costs (including any direct, out-of-pocket costs incurred by Ameritech on behalf of Reseller) of implementing the terms of this Agreement up to the date of cancellation.

15.5. Except with respect to Reseller's failure to pay past due undisputed amounts as set forth in Section 11.7, when a Party believes that the other Party is in violation of a material term or condition of this Agreement ("Defaulting Party"), it shall provide written notice to such Defaulting Party of such violation prior to commencing the dispute resolution procedures set forth in Section 18.1 and it shall be resolved in accordance with the procedures established in Section 18.1.

15.6. Upon termination or expiration of this Agreement in accordance with this Section 15.0:

(a) each Party shall comply immediately with its obligations set forth in Section 17.4; and

(b) each Party shall promptly pay all amounts (including any interest charges) for all services provided to and/or performed for such Party and all expenses that are properly accrued or incurred on behalf of such Party by the other Party prior to such expiration or termination.

**16.0 REGULATORY APPROVAL**

16.1. The Parties understand and agree that this Agreement will be filed with the Commission for approval by such Commission pursuant to Section 252 of the Act. If the Commission, the FCC or any court rejects any portion of this Agreement, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion and related provisions; provided that such rejected portion shall not affect the validity of the remainder of this Agreement.

16.2. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date. In the event of any amendment of the Act, or any legislative, regulatory, judicial order, rule or regulation or other legal action that revises or reverses the Act, the FCC's First Report and Order in CC Docket Nos. 96-98 and 95-185 or any applicable Commission order or arbitration award purporting to apply the provisions of the Act (individually and collectively, an "Amendment to the Act"), either Party may by providing written notice to the other Party require that the affected provisions be renegotiated in good faith and this Agreement be amended accordingly to reflect the pricing, terms and conditions of each such Amendment to the Act relating to any of the provisions in this Agreement. If any such amendment to this Agreement affects any rates or charges of the services provided hereunder, such amendment shall be retroactively effective as determined by the Commission and each Party reserves its rights and remedies with respect to the collection of such rates or charges, including the right to seek a surcharge before the applicable regulatory authority.

16.3. If any legislative, regulatory, judicial or other legal action (other than an Amendment to the Act, which is provided for in Section 16.2) materially affects the ability of a Party to perform any material obligation under this Agreement, a Party may, on thirty (30) days' written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding), require that the affected provision(s) be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new provision(s) as may be required; provided that such affected provisions shall not affect the validity of the remainder of this Agreement.

**17.0 PROPRIETARY INFORMATION****17.1. Definition of Proprietary Information.****17.1.1. "Proprietary Information" means:**

- (a) all proprietary or confidential information of a Party (a "Disclosing Party") including specifications, drawings, sketches, business information, forecasts, records

EXECUTION ORIGINAL

(including each Party's records regarding Performance Benchmarks), Customer Proprietary Network Information, Customer Usage Data, audit information, models, samples, data, system interfaces, computer programs and other software and documentation that is furnished or made available or otherwise disclosed to the other Party or any of such other Party's Affiliates (individually and collectively, a "Receiving Party") pursuant to this Agreement and, if written, is marked "Confidential" or "Proprietary" or by other similar notice or if oral or visual, is identified as "Confidential" or "Proprietary" at the time of disclosure; and

(b) any portion of any notes, analyses, data, compilations, studies, interpretations or other documents prepared by any Receiving Party to the extent that the same contain, reflect, are derived from, or are based upon, any of the information described in subsection (a) above, unless such information contained or reflected in such notes, analyses, etc. is so commingled with the Receiving Party's information that disclosure could not possibly disclose the underlying proprietary or confidential information (such portions of such notes, analyses, etc. referred to herein as "Derivative Information").

17.1.2. The Disclosing Party will use its reasonable efforts to follow its customary practices regarding the marking of tangible Proprietary Information as "confidential," "proprietary," or other similar designation. The Parties agree that the designation in writing by the Disclosing Party that information is confidential or proprietary shall create a presumption that such information is confidential or proprietary to the extent such designation is reasonable.

17.1.3. Notwithstanding the requirements of this Section 17.0, all information relating to the Customers of a Party, including information that would constitute Customer Proprietary Network Information of a Party pursuant to the Act and FCC rules and regulations, and Customer Usage Data, whether disclosed by one Party to the other Party or otherwise acquired by a Party in the course of the performance of this Agreement, shall be deemed "Proprietary Information."

17.2. Disclosure and Use.

17.2.1 Each Receiving Party agrees that from and after the Effective Date:

(a) all Proprietary Information communicated, whether before, on or after the Effective Date, to it or any of its contractors, consultants or agents ("Representatives") in connection with this Agreement shall be held in confidence to the same extent as such Receiving Party holds its own confidential information; provided that such Receiving Party

EXECUTION ORIGINAL

or Representative shall not use less than a reasonable standard of care in maintaining the confidentiality of such information;

(b) it will not, and it will not permit any of its employees, Affiliates or Representatives to disclose such Proprietary Information to any third person;

(c) it will disclose Proprietary Information only to those of its employees, Affiliates and Representatives who have a need for it in connection with the use or provision of services required to fulfill this Agreement; and

(d) it will, and will cause each of its employees, Affiliates and Representatives to use such Proprietary Information only to perform its obligations under this Agreement or to use services provided by the Disclosing Party hereunder and for no other purpose, including its own marketing purposes.

17.2.2 A Receiving Party may disclose Proprietary Information of a Disclosing Party to its Representatives who need to know such information to perform their obligations under this Agreement; provided that before disclosing any Proprietary Information to any Representative, such Party shall notify such Representative of such person's obligation to comply with this Agreement. Any Receiving Party so disclosing Proprietary Information shall be responsible for any breach of this Agreement by any of its Representatives and such Receiving Party agrees, at its sole expense, to use its reasonable efforts (including court proceedings) to restrain its Representatives from any prohibited or unauthorized disclosure or use of the Proprietary Information. Each Receiving Party making such disclosure shall notify the Disclosing Party as soon as possible if it has knowledge of a breach of this Agreement in any material respect. A Disclosing Party shall not disclose Proprietary Information directly to a Representative of the Receiving Party without the prior written authorization of the Receiving Party.

17.2.3 Proprietary Information shall not be reproduced by any Receiving Party in any form except to the extent (i) necessary to comply with the provisions of Section 17.3 and (ii) reasonably necessary to perform its obligations under this Agreement. All such reproductions shall bear the same copyright and proprietary rights notices as are contained in or on the original.

17.2.4 This Section 17.2 shall not apply to any Proprietary Information which the Receiving Party can establish to have:

(a) been disclosed by the Receiving Party with the Disclosing Party's prior written consent;

EXECUTION ORIGINAL

(b) become generally available to the public other than as a result of disclosure by a Receiving Party;

(c) been independently developed by a Receiving Party by an individual who has not had knowledge of or direct or indirect access to such Proprietary Information;

(d) been rightfully obtained by the Receiving Party from a third person without knowledge that such third person is obligated to protect its confidentiality; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such third person has any such obligation; or

(e) been obligated to be produced or disclosed by Applicable Law; provided that such production or disclosure shall have been made in accordance with Section 17.3.

**17.3. Government Disclosure.**

17.3.1. If a Receiving Party desires to disclose or provide to the Commission, the FCC or any other governmental authority any Proprietary Information of the Disclosing Party, such Receiving Party shall, prior to and as a condition of such disclosure, (i) provide the Disclosing Party with written notice and the form of such proposed disclosure as soon as possible but in any event early enough to allow the Disclosing Party to protect its interests in the Proprietary Information to be disclosed and (ii) attempt to obtain in accordance with the applicable procedures of the intended recipient of such Proprietary Information an order, appropriate protective relief or other reliable assurance that confidential treatment shall be accorded to such Proprietary Information.

17.3.2. If a Receiving Party is required by any governmental authority or by Applicable Law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. Upon receipt of written notice of the requirement to disclose Proprietary Information, the Disclosing Party, at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or waive the Receiving Party's compliance with this Section 17.3 with respect to all or part of such requirement.

17.3.3. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to seek pursuant to this Section 17.3. In the absence of such relief, if the Receiving Party is legally compelled to disclose any Proprietary Information, then the Receiving Party shall exercise all commercially reasonable efforts to preserve the confidentiality of the Proprietary Information, including cooperating with

## EXECUTION ORIGINAL

the Disclosing Party to obtain an appropriate order or other reliable assurance that confidential treatment will be accorded the Proprietary Information.

### 17.4. Ownership.

17.4.1. All Proprietary Information, other than Derivative Information, shall remain the property of the Disclosing Party, and all documents or other tangible media delivered to the Receiving Party that embody such Proprietary Information shall be, at the option of the Disclosing Party, either promptly returned to Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Proprietary Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.

17.4.2. At the request of the Disclosing Party, any Derivative Information shall be; at the option of the Receiving Party, either promptly returned to the Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Derivative Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.

17.4.3. The Receiving Party may at any time either return Proprietary Information to the Disclosing Party or destroy such Proprietary Information. If destroyed, all copies shall be destroyed and upon the written request of the Disclosing Party, the Receiving Party shall provide the Disclosing Party written certification of such destruction. The destruction or return of Proprietary Information shall not relieve any Receiving Party of its obligation to treat such Proprietary Information in the manner required by this Agreement.

## 18.0 DISPUTE RESOLUTION

18.1. Except as otherwise provided herein, any dispute, controversy or claim (individually and collectively, a "Dispute") arising under this Agreement shall be resolved in accordance with the procedures set forth in this Section 18.1. In the event of a Dispute between the Parties relating to this Agreement and upon the written request of either Party, each of the Parties shall appoint within five (5) Business Days after a Party's receipt of such request a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussion will be left to the discretion of the designated representatives, however,

## EXECUTION ORIGINAL

all reasonable requests for relevant information made by one Party to the other shall be honored. If the Parties are unable to resolve issues related to a Dispute within thirty (30) days after the Parties' appointment of designated representatives as set forth above, the Parties shall attempt in good faith to resolve the Dispute according to the rules, guidelines or regulations of the Commission. Notwithstanding the foregoing, in no event shall the parties permit the pending of a Dispute to disrupt service to any Reseller Customer."

18.2. Notwithstanding the foregoing, this Section 18.0 shall not be construed to prevent either Party from seeking and obtaining temporary equitable remedies, including temporary restraining orders, if, in its judgment, such action is necessary to avoid irreparable harm. Despite any such action, the Parties will continue to participate in good faith in the dispute resolution procedures described in this Section 18.0.

## 19.0 PUBLICITY

Neither Party nor its subcontractors or agents shall use the other Party's trademarks, trade names, service marks or other proprietary marks in any advertising, press releases, publicity matters or other promotional materials without such other Party's prior written consent, except as permitted by Applicable Law. In no event shall either Party mischaracterize the contents of this Agreement or the business relationship of the Parties in any public statement or in any representation to a governmental entity or business thereof.

## 20.0 SEVERABILITY

If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflect such intent as closely as possible.

## 21.0 MISCELLANEOUS

### 21.1. Authorization.

21.1.1 Ameritech Services, Inc. is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Ameritech Information Industry Services, a division of Ameritech Services, Inc., has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder on behalf of and as agent for Ameritech Illinois.



EXECUTION ORIGINAL

21.1.2 Reseller is a corporation duly organized, validly existing and in good standing under the laws of the state of \_\_\_\_\_ and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Reseller represents and warrants to Ameritech that it has been certified or prior to receiving from Ameritech and providing to any Customer any services contemplated hereunder will have been, certified as an LEC by the Commission and is authorized to provide in the Territory the services contemplated hereunder.

21.1.3 Each Party represents to the other Party that the person signing this Agreement on behalf of such Party is properly authorized to enter into this Agreement. Each Party further acknowledges that it has read this Agreement, understood it, and agrees to be bound by all of its terms and conditions.

21.2. Compliance with Applicable Law. Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations (collectively, "Applicable Law") applicable to its performance under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.

21.3. Subcontracting. Either Party may subcontract the performance of its obligations under this Agreement without the prior written consent of the other Party; provided, however, that the Party subcontracting such obligation shall remain fully responsible for (i) the performance of such obligation, (ii) payments due its subcontractors and (iii) such subcontractors' compliance with the terms, conditions and restrictions of this Agreement.

21.4. Independent Contractor. Ameritech shall provide the Resale Services hereunder as an independent contractor and nothing herein shall be construed as creating any other relationship between the Parties. Each Party and each Party's contractor shall be solely responsible for the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to their employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

21.5. Force Majeure. Neither Party shall be liable for any delay or failure in the performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). If a Force

EXECUTION ORIGINAL

Majeure Event shall occur, the Party affected shall give prompt notice to the other Party of such Force Majeure Event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the interfered performance). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance and the Parties shall give like notice and proceed to perform with dispatch once the causes are removed or cease.

**21.6. Governing Law.** Unless otherwise provided by Applicable Law, this Agreement shall be governed by the domestic laws of the State of Illinois without reference to conflict of law provisions.

**21.7. Non-Assignment.** Reseller may not assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third person without the prior written consent of Ameritech; provided that Reseller may assign or transfer this Agreement to its Affiliate by providing prior written notice to Ameritech of such assignment or transfer; provided, further, that such assignment is not inconsistent with Applicable Law (including, the Affiliate's obligation to obtain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, Reseller may not assign or transfer this Agreement (or any rights or obligations hereunder) to its Affiliate if that Affiliate is a party to an agreement with Ameritech under Sections 251/252 of the Act. Any attempted assignment or transfer that is not permitted is void ab initio.

**21.8. Non-Waiver.** No waiver of any provision of this Agreement shall be effective unless the same shall be in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

**21.9. Notices.** Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (a) delivered personally, (b) delivered by express delivery service, (c) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested or (d) delivered by facsimile to the following addresses of the Parties:

EXECUTION ORIGINAL

To Reseller:

Kayla Communications, Inc.  
3804 West Chicago Avenue  
Chicago, Illinois 60651  
Roderick Brim, President

To Ameritech:

Ameritech Information Industry Services  
350 North Orleans, Floor 3  
Chicago, IL 60654  
Attn.: Vice President - Network Providers  
Facsimile: (312) 335-2927

with a copy to:

Ameritech Information Industry Services  
350 North Orleans, Floor 5  
Chicago, IL 60654  
Attn.: Vice President and General Counsel  
Facsimile: (312) 245-0254

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next Business Day when notice is sent via express mail or personal delivery, (iii) three (3) days after mailing in the case of first class or certified U.S. mail or (iv) on the date set forth on the confirmation in the case of facsimile.

**21.10. Joint Work Product.** This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

**21.11. No Third Party Beneficiaries; Disclaimer of Agency.** This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no

EXECUTION ORIGINAL

Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

21.12. No License: Affirmation of Proprietary Rights. No license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by Ameritech to Reseller nor shall any license be implied or arise by estoppel with respect to any transactions contemplated under this Agreement. Both Parties acknowledge that each shall not acquire any proprietary or Intellectual Property rights in any Proprietary Information disclosed, furnished or made available by the other Party hereunder or any enhancement, improvement, revision, derivative work, extension, update or modification to any such Proprietary Information or any aspect thereof.

21.13. Necessary Approvals. Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

21.14. Insurance. At all times during the term of this Agreement, each Party shall keep and maintain in force at such Party's expense all insurance required by Applicable Law, general liability insurance in the amount of at least \$10,000,000 and worker's compensation insurance. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self-insurance).

21.15. Good Faith Performance. Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement, as the case may be.

21.16. Notice of Changes. If a Party (i) makes a change in its network that will materially affect the interoperability of its network with the other Party or (ii) changes Operations Support Systems functions that affect the operations of the other Party, the Party making the change shall provide reasonable advance written notice of such change to the other Party to the extent required by and within such time period as determined by the FCC or the Commission and their respective rules and regulations.

21.17. Designation of Affiliate. Each Party may without the consent of the other Party fulfill its obligations under this Agreement by itself or may cause its Affiliates to take some or all of such actions to fulfill such obligations. Upon such designation, the Affiliate shall become a primary obligor hereunder with respect to the delegated matter, but such designation shall not

EXECUTION ORIGINAL

relieve the designating Party of its obligations as co-obligor hereunder. Any Party which elects to perform its obligations through an Affiliate shall cause its Affiliate to take all action necessary for the performance hereunder of such Party's obligations. Each Party represents and warrants that if an obligation under this Agreement is to be performed by an Affiliate, such Party has the authority to cause such Affiliate to perform such obligation and such Affiliate will have the resources required to accomplish the delegated performance.

**21.18. Survival.** The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement, including without limitation, Sections 6.8, 7.9, 11.0, 12.0, 13.0, 14.0, 15.0, 17.0, and 21.11.

**21.19. Entire Agreement.** The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein, which are incorporated into this Agreement by this reference, constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written, other than the Nondisclosure Agreement. Notwithstanding the Nondisclosure Agreement and except as otherwise provided herein, the provisions of this Agreement (and not the Nondisclosure Agreement) shall apply to the treatment, disclosure and use following the date of this Agreement of all Proprietary Information which is communicated to a Receiving Party on or after the date of this Agreement. Neither Party shall be bound by any pre-printed terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified by a writing signed by an officer of each Party.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the Effective Date.

KAYLA COMMUNICATIONS, INC.

AMERITECH INFORMATION  
INDUSTRY SERVICES, A DIVISION OF  
AMERITECH SERVICES, INC., ON  
BEHALF OF AND AS AGENT FOR  
AMERITECH ILLINOIS

By: [Signature]

Name: Richard Bein

Title: President

By: [Signature]

Name: Anne L. Zaczek

Title: VP - Finance

4794672.1 92899 1349C 96252093

000 Z0A A 00M 000 J00Z 00Z 000

EXECUTION ORIGINAL

**SCHEDULE 2.2**

## RESALE SERVICES

The Resale Services provided hereunder and the rates for such Resale Services by Ameritech are those Telecommunications Services set forth in the Resale Tariff(s).

4794672 1 92799 1807C 96252093

Sch. 2.2 - 1

♠ ♣ ♢ ♡ ♧ ♦ ♨ ♩

3122450240 TO 17737454514 P.45/46

JUN 22 '00 10:02 FR AMERITECH

## SCHEDULE 2.5

### FORM OF AGREEMENT TO ASSUME AMERITECH CONTRACTS

With the submission by Reseller to Ameritech Information Industry Services, a division of Ameritech Services, Inc., on behalf of an agent for Ameritech Illinois ("Ameritech") of any Orders in which Reseller is assuming a contract for a service that Ameritech provides to an end-user (e.g., Optional Calling Plans, Centrex Lines, Private Lines, ICBs, etc.), Reseller agrees to purchase for resale to the same end-user the telecommunications services described in each such contract subject to the terms and conditions of such contract including, any termination liability.

Reseller represents and warrants to Ameritech that, prior to submission of any Orders(s) for a service available under an assumed contract, each existing retail contract between Ameritech and the end-user will have been assigned in writing to Reseller by the end-user in accordance with the provisions of such retail contract. Reseller agrees to defend, indemnify and hold Ameritech harmless from any and all losses, costs, claims, damages, injuries, liabilities, and expenses (including attorneys' fees) from any claim by a third party, including an end-user, arising or relating to the assignment of the contract to Reseller.

ACCEPTED AND AGREED:

**KAYLA COMMUNICATIONS, INC.**

Signature: For Kayla

Date: \_\_\_\_\_